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7 IN THE UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON

9 THE UNITED STATES OF AMERICA,)

10 Plaintiff,)

11 v.)

12 THE BOC GROUP, INC.,)

13 Defendant.)
14

CIVIL ACTION NO.

CIVIL COMPLAINT

15 The United States of America, by authority of the Attorney General of the United States and
16 through the undersigned attorneys, acting at the request of the United States Environmental Protection
17 Agency (EPA) hereby files this Civil Complaint for Relief Under Sections 106 and 107 of the
18 Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. §§
19 9606 & 9607, and Section 7003 of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C.
20 6973, and alleges as follows:

21 INTRODUCTION

22 1. This is a civil action brought pursuant to Sections 106 and 107 of CERCLA, 42 U.S.C.
23 §§ 9606 & 9607. By this action the United States seeks: 1) an order compelling defendant The BOC
24 Group, Inc. (BOC) to implement the environmental remedy selected by EPA for the Boomsnub/Airco
25 Superfund Site in Vancouver, Washington ("the Site"); and 2) recovery of all costs incurred and to be
26 incurred by the United States in response to releases or threatened releases of hazardous substances at or
27 from the Site.

28 JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action pursuant to Sections

1 107(a) and 113(b) of CERCLA, 42 U.S.C. §§ 9607(a) and 9613(b), Section 7003 of RCRA, 42 U.S.C.
2 § 6973, and 28 U.S.C. §§ 1331 and 1345.

3 3. Pursuant to Section 113(b) of CERCLA, 42 U.S.C. § 9613(b), Section 7003 of RCRA, 42
4 U.S.C. § 6973, and 28 U.S.C. § 1391(b), venue is proper in this district because the releases or
5 threatened releases of hazardous substances that give rise to the claims occurred in this judicial district
6 and the defendant does business in this judicial district.

7 DEFENDANT

8 4. Defendant BOC is incorporated in the State of Delaware and does business in the State of
9 Washington. BOC is a "person" within the meaning of Section 101(21) of CERCLA, 42 U.S.C.
10 § 9601(21) and Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

11 RELEVANT FACTS

12 5. The Boomsnub/Airco Superfund Site is located on two adjacent industrial properties
13 within the city limits of Vancouver, Washington. One of the Site properties was the location of a
14 chrome-plating shop called Boomsnub Chrome and Grind. The adjacent property is the location of BOC
15 Gases, a facility owned and operated by BOC at which BOC manufactures and sells industrial gases,
16 including nitrogen, oxygen, and argon.

17 6. During BOC's ownership and operation of the BOC Gases facility, the facility released
18 various volatile organic compounds (VOCs) into the soil and groundwater at the Site. The VOCs
19 released into the soil and groundwater by BOC at the Site were "hazardous substances," as that term in
20 defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

21 7. Thus during BOC's ownership and operation of the BOC Gases facility, BOC handled
22 stored, treated, and disposed of hazardous wastes that presented an imminent and substantial
23 endangerment to health or the environment.

24 8. Thus there have also been releases and/or threats of releases of hazardous substances at
25 the Site during a period of BOC's ownership and operation of the Site.

26 9. EPA conducted various investigations and emergency removal actions at the Site in the
27 late 1980's and early 1990's. EPA's removal actions included the installation of a groundwater
28 extraction and treatment system.

1 10. In 1995 EPA placed the Site on the National Priorities List.

2 11. The National Priorities List is a national list of hazardous waste sites posing the greatest
3 threat to health, welfare and the environment. The National Priorities List has been established pursuant
4 to Section 105(a) of CERCLA, 42 U.S.C. § 9605(a).

5 12. In 1995 EPA began a Remedial Investigation / Feasibility Study (RI/FS) at the Site. EPA
6 issued a Record of Decision (ROD) for the Site in February of 2000. The ROD set forth the permanent
7 environmental remedy selected by EPA for the Site.

8 13. To date, EPA has incurred \$13,400,000 in unreimbursed costs in response to releases and
9 threats of releases of hazardous substances at the Site.

10 LAW GOVERNING CLAIMS FOR RELIEF UNDER SECTION 107 OF CERCLA

11 14. Sections 104(a) and (b) of CERCLA, 42 U.S.C. §§ 9604(a) & (b), provide that whenever
12 any hazardous substance is released into the environment, or there is a substantial threat of such a
13 release, the President is authorized to act, consistent with the National Contingency Plan, to remove or
14 arrange for the removal of such hazardous substance, and to undertake such investigations, monitoring,
15 surveys, testing or other information gathering as necessary to identify the existence and extent of the
16 releases and the extent of the danger to public health or welfare or to the environment.

17 15. Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), provides:

18 In addition to any other action taken by a State or local government, when the President
19 determines that there may be an imminent and substantial endangerment to the public
20 health or welfare or the environment because of an actual or threatened release of a
21 hazardous substance from a facility, he may require the Attorney General of the United
22 States to secure such relief as may be necessary to abate such danger or threat, and the
23 district court of the United States in the district in which the threat occurs shall have
24 jurisdiction to grant such relief as the public interest and the equities of the case may
25 require. The President may also, after notice to the affected State, take other action under
26 this section including, but not limited to, issuing such orders as may be necessary to
27 protect public health and welfare and the environment.

28 16. Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), provides, in pertinent part:

Notwithstanding any other provision or rule of law, and subject only to the defenses set forth in
subsection (b) of this section --

(2) any person who at the time of disposal of any hazardous substance
owned or operated any facility at which such hazardous substances were
disposed of,

* * *

1 shall be liable for --

2 (A) all costs of removal or remedial action incurred by the United States Government or
3 a State . . . not inconsistent with the national contingency plan

4 LAW GOVERNING CLAIMS FOR RELIEF UNDER RCRA

5 17. Section 7003 of RCRA, 42 U.S.C. § 6973, provides:

6 (a) Notwithstanding any other provision of this chapter, upon receipt of evidence that
7 the past or present handling, storage, treatment, transportation or disposal of any solid
8 waste or hazardous waste may present an imminent and substantial endangerment to
9 health or the environment, the Administrator may bring suit on behalf of the United
10 States in the appropriate district court against any person (including any past or present
generator, past or present transporter, or past or present owner or operator of a treatment,
storage, or disposal facility) who has contributed or who is contributing to such handling,
storage, treatment, transportation or disposal to restrain such person from such handling,
storage, treatment, transportation, or disposal, to order such person to take such other
action as may be necessary, or both.

11 GENERAL ALLEGATIONS

12 18. The Site is a "facility" within the meaning of Section 101(9) of CERCLA, 42 U.S.C. §
13 9601(9).

14 19. Hazardous substances, within the meaning of Section 101(14) of CERCLA, 42 U.S.C.
15 § 9601(14), have been generated and disposed of at the Site, and have come to be located in the soil and
16 groundwater at the Site.

17 20. There are and were, within the meaning of Section 101(22) of CERCLA, 42 U.S.C.
18 § 9601(22), releases and threatened releases of hazardous substances into the environment at and from
19 the Site.

20 21. As a result of the releases or threatened releases of hazardous substances at or from the
21 Site, the United States has, through EPA, incurred "response" costs as defined in Section 101(25) of
22 CERCLA, 42 U.S.C. § 9601(25), for actions taken in response to the releases or threatened releases at or
23 from the Site. The United States will continue to incur response costs in connection with the Site.

24 22. As a result of such response actions, the United States has incurred costs for response
25 actions. Such costs have not been fully reimbursed.

26 23. The response costs incurred by the United States are not inconsistent with the National
27 Contingency Plan, 40 C.F.R. Part 300.

28 24. BOC and BOC Gases, Inc. engaged in the handling, storage, treatment, and disposal of

1 hazardous wastes that presented and do present an imminent and substantial endangerment to health or
2 the environment, within the meaning of Section 7003 of RCRA, 42 U.S.C. § 6973.

3 FIRST CLAIM FOR RELIEF:
4 LIABILITY UNDER SECTION 107(a)(2) OF CERCLA

5 25. Paragraphs 1 through 24 are realleged and incorporated herein by reference.

6 26. Defendant BOC owned and operated the BOC Gases facility at the Site during the time of
7 the disposal of hazardous substances at the Site.

8 27. Hazardous substances have been released at or from the Site into the environment within
9 the meaning of CERCLA, 42 U.S.C. §§ 9601, 9607.

10 28. BOC is therefore liable, under Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2), for
11 all costs incurred by the United States in response to releases or threats of releases of hazardous
12 substances at and from the BOC Gases facility at the Site.

13 29. BOC has not fully reimbursed the United States for the costs incurred in responding to the
14 release of hazardous substances at the BOC Gases facility at the Site.

15 SECOND CLAIM FOR RELIEF:
16 LIABILITY FOR REMEDY IMPLEMENTATION
17 UNDER SECTION 106 OF CERCLA

18 30. Paragraphs 1 through 29 are realleged and incorporated herein by reference.

19 31. Based on the imminent and substantial endangerment to human health and the
20 environment resulting from releases of hazardous substances at the BOC facility, the United States is
21 authorized by Section 106 of CERCLA, 42 U.S.C. § 9606, to seek an order from this Court requiring
22 defendant BOC to implement EPA's selected remedy for the Site.

23 32. This Court may order BOC, as a liable party under Section 107(a)(2) of CERCLA, to
24 implement EPA's selected remedy at the Site.

25 THIRD CLAIM FOR RELIEF:
26 LIABILITY UNDER SECTION 7003 OF RCRA

27 33. Paragraphs 1 through 32 are realleged and incorporated herein by reference.

28 34. Based on the storage, treatment, and disposal of hazardous wastes at the BOC facility,
which may present an imminent and substantial endangerment to human health and the environment, the
United States is authorized by Section 7003 of RCRA, 42 U.S.C. § 6973, to seek an order from this

1 Court requiring defendant BOC to take appropriate actions, including the implementation of EPA's
2 selected remedy for the Site.

3 PRAYER FOR RELIEF

4 WHEREFORE, Plaintiff, the United States of America, respectfully requests that the Court:

- 5 1. Issue an Order to defendant BOC requiring it to implement the permanent environmental
6 remedy selected by EPA for the Site in EPA's ROD.
- 7 2. Enter judgment against BOC for all costs incurred by the United States in response to
8 releases or threats of releases of hazardous substances at the Site;
- 9 3. Award the United States prejudgment interest on its response costs;
- 10 4. Enter a declaratory judgment against defendant BOC, pursuant to Section 113(g)(2) of
11 CERCLA, 42 U.S.C. § 9613(g)(2), that will be binding in any action to recover further response costs
12 incurred by the United States; and
- 13 5. Grant such other relief as the Court deems appropriate.
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15 Respectfully submitted, 

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